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RECORDATION NO. _____ Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of December 15, 1974

between

Chemical Bank

and

Harvey Enterprises

CONDITIONAL SALE AGREEMENT dated as of December 15, 1974, between CHEMICAL BANK, a New York banking corporation (hereinafter called the Vendor), and HARVEY ENTERPRISES, a limited partnership (hereinafter called the Vendee).

WHEREAS the Vendor agrees to sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Exhibit A hereto (hereinafter called the Equipment);

WHEREAS the Vendor is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Other Agreement) with Harvey Industries, Inc., a Delaware corporation;

WHEREAS the Vendee proposes to lease the Equipment to railroad companies, in each case pursuant to a Railroad Car Lease Agreement substantially in the form of Exhibit B hereto (such form being hereinafter called the Form of Lease, each such lease being hereinafter called a Lease and any lessee thereunder being called a Lessee);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Delivery. Subject to the provisions of Article 17 hereof, the Vendor will deliver the units of its Equipment to the Vendee at the place or places and at the time or times which such units are delivered to the Vendor by the Trustees of the Property of Penn Central Transportation Company (hereinafter called the Trustees).

Any Equipment not delivered on or before June 1, 1975, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Upon delivery of each unit or of a number of units of the Equipment, an inspector or an authorized representative of the Vendee shall execute and deliver to the Vendor a certifi-

cate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 5 hereof.

On delivery of each such unit hereunder the Vendee will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 2. Purchase Price and Payment. The Purchase Price or Prices per unit of the Equipment are set forth in Schedule A hereto.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of each unit of the Equipment plus the Expenses (as defined in Article 19 hereof) (the aggregate of such Purchase Prices and Expenses being hereinafter called the Conditional Sale Indebtedness), when and as each unit is delivered to the Vendee hereunder or, in the case of Expenses, the later of (a) the date such Expenses are incurred and (b) the date hereof.

The Conditional Sale Indebtedness shall be payable in quarterly instalments, as hereinafter provided, on March 1, June 1, September 1, and December 1 in each year commencing on June 1, 1975, to and including June 1, 1980 (each such date being hereinafter called a Payment Date). The instalment of Conditional Sale Indebtedness payable on any Payment Date except June 1, 1980, shall consist of the aggregate of the Rental (as defined in the Form of Lease) received by the Vendee pursuant to the Lease or Leases during the quarterly period next preceding such Payment Date, less (a) the amount of such Rental attributable to "incentive income" (as defined in the Form of Lease), (b) 6% of the Rental, after giving effect to the deduction set forth in clause (a), (c) the out-of-pocket costs of the Vendee for maintenance, repair, delivery, operation, servicing, improvement or replacement of the Equipment in order to comply with the provisions of Article 7 hereof not reimbursed by any Lessee pursuant to a Lease, (d) the fees and expenses of the public accountants in connection with the certification of financial statements pursuant to the second paragraph of Article 10 hereof, and (e) any interest paid pursuant to the next succeeding para-

graph. The instalment of Conditional Sale Indebtedness payable on June 1, 1980, shall consist of the entire amount of Conditional Sale Indebtedness then unpaid. The Vendee may prepay any amount of Conditional Sale Indebtedness at any time.

The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective delivery dates on which such indebtedness was incurred at the rate of $11\frac{3}{4}\%$ per annum. Such interest shall be payable, to the extent accrued, on each Payment Date. The amount of any interest accrued and unpaid on June 1, 1975, shall be payable on June 1, 1980, and interest shall not accrue on such interest until June 1, 1980.

In the event that any Payment Date shall not be a business day, the payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed. All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest at the rate of $12\frac{3}{4}\%$ per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof (except amounts unpaid on June 1, 1975), anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

The liability of the Vendee for all payments to be made by it under and pursuant to this Agreement, with the exceptions only of the payments to be made pursuant to Article 19 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee, only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. As used herein the term

"income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 14 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts payable by any Lessee pursuant to any Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) [not including amounts paid by the Lessee to the Vendee as reimbursement of sums paid by the Vendee on account of prior defaults under paragraph (a) of Article 14] as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid in accordance with the foregoing paragraphs of this Article 2 or as shall equal any other payments then due and payable under this Agreement. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Articles 14 or 15 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 3. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms

hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or" rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 4. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the full Conditional Sale Indebtedness, together with interest and all other payments as herein provided, shall have been paid, and all the Vendee's obligations herein contained shall have been performed

by the Vendee, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of

any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 5. Marking of the Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the identifying number as set forth in Exhibit A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Owned by Harvey Enterprises, Huntington, New York, and subject to a Security Interest of Chemical Bank, Recorded with the ICC", or other appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's security interest in the Equipment and its rights under this Agreement. The Vendee will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Vendee will not change the number

of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, or permit any unit to be numbered with the road numbers of any party other than the Vendee, unless such unit has been leased to such party pursuant to a Lease, and such a statement and/or Lease previously shall have been filed with the Vendor by the Vendee and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Vendee may cause the Equipment to be lettered with the names or initials or other insignia of a lessee pursuant to a Lease authorized by Article 8 hereof.

ARTICLE 6. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Vendee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. The Vendee, within 30 days after it has knowledge of such event, shall promptly pay to the Vendor any amounts received by the Vendee in respect of the loss, destruction or removal from use of such units of the Equipment pursuant to any Lease or otherwise.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 6 shall be applied in whole or in part, to reduce the aggregate amount of Conditional Sale Indebtedness.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Vendee, after payment by the Vendee of a sum equal to the value of such Equipment, execute and deliver to the Vendee or the Vendee's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Vendee.

ARTICLE 7. Maintenance; Compliance with Laws and Rules. The Vendee will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Vendee will at all times comply in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Vendee will conform therewith, at its own expense; provided, however, that the Vendee may, in good faith, contest the validity of application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 8. Possession and Use. The Vendee, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment or any unit thereof to any railroad company, subject to the following conditions:

(a) any such Lease shall be substantially in the form of the Form of Lease;

(b) any such Lease and any guaranty in respect thereof shall be assigned to the Vendor as security pursuant to an Assignment of Lease and Agreement substantially in the form of Exhibit C hereto (hereinafter called an Assignment) and the original counterpart of such Lease shall be delivered to the Vendor;

(c) any such Lease and the Assignment thereof shall, prior to delivery of any unit of Equipment to a lessee thereunder, be filed and recorded with the

Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act; and

(d) the Vendee shall furnish to the Vendor counterparts of all reports, opinions of counsel, officer's certificates, guaranties of parent corporations, and other documents and instruments received from time to time by the Vendee pursuant to any such Lease.

ARTICLE 9. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Vendee shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 10. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Agreement, the Vendee shall furnish to the Vendor an accurate statement signed by an officer of the Vendee (a) setting forth as at the preceding December 31 the Amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 5 hereof have

been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement, but the Vendee shall have no obligation to move or assemble any unit of the Equipment for such inspection.

The Vendee will furnish the Vendor (i) within 45 days after the end of each of the first three quarterly fiscal periods of the Vendee, consolidated balance sheets of the Vendee as of the close of such periods, together with the related consolidated statements of income, surplus and source and application of funds for such periods, all in reasonable detail and certified by an officer of the Vendee and (ii) within 90 days after the close of the fiscal year of the Vendee, balance sheets of the Vendee as of the close of such fiscal years, together with the related statements of income, surplus and source and application of funds for such fiscal years, all in reasonable detail and certified by a recognized national firm of independent public accountants satisfactory to the Vendor, including their certificates and accompanying comments, and (iii) from time to time such other information as the Vendor may reasonably request.

ARTICLE 11. Vendee's Indemnities. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees (except such fees as are paid pursuant to Article 19 hereof) arising out of retention by the Vendor of a security interest to the Equipment, the use and operation thereof by the Vendee during the period when a security interest therein remains in the Vendor. This covenant of indemnity shall continue in full force and effect, but only in respect of events occurring or liabilities arising during the aforesaid period, notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 12. Disclaimer of Warranties. THE VENDOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT DELIVERED TO THE VENDEE HEREUNDER, AND THE VENDOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIP-

MENT FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE EQUIPMENT OR ANY COMPONENT THEREOF, it being agreed that all such risks, as between the Vendor and the Vendee, are to be borne by the Vendee; but the Vendor hereby irrevocably appoints and constitutes the Vendee its agent and attorney-in-fact during the term of this Agreement to assert and enforce from time to time, in the name of and for the account of the Vendor and/or the Vendee, as their interests may appear, at the Vendee's sole cost and expense, whatever claims and rights the Vendor may have against the Trustees of the Property of Penn Central Transportation Company in respect of the Equipment. The Vendor shall have no responsibility or liability to the Vendee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Equipment. The Vendee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Vendee and the Vendor that the Equipment described therein is in all the foregoing respects satisfactory to the Vendee, and the Vendee will not assert any claim of any nature whatsoever against the Vendor based on any of the foregoing matters.

ARTICLE 13. Assignments. The Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 8 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the property of the Vendee, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Vendee under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any

assignee at any time or from time to time.

Upon any such assignment either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

ARTICLE 14. Defaults. In the event that any one or more of the following events of default shall occur and be continuing (irrespective of the provisions of the last paragraph of Article 2 hereof) to wit:

(a) the Vendee shall fail to pay in full the interest in respect of the Conditional Sale Indebtedness or any other sums payable as provided in this Agreement after June 1, 1975, within ten days after the Vendor shall have notified the Vendee of such failure; or

(b) the Vendee shall fail to pay on the three Payment Dates next succeeding June 1, 1975, an aggregate of principal of the Conditional Sale Indebtedness and interest thereon under this Agreement and the Other Agreement of \$450,000; or

(c) the Vendee shall fail to pay, in any year ending March 1, commencing with the year ending March 1, 1977, an aggregate of principal of the Conditional Sale Indebtedness and interest thereon under this Agreement and the Other Agreement of \$675,000; or

(d) the Vendee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(e) any proceedings shall be commenced by or against the Vendee for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) the Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized lease or transfer of the right to possession of any unit of the Equipment; or

(g) an event of default shall have occurred and be continuing under the Other Agreement;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 2 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with

interest as aforesaid, and to collect such judgment out of any property of the Vendee wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 15. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 15 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the Vendee's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Vendee or its lessees for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on the lines

of its lessees as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the lessees of the Vendee as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of such lines or premises until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Vendee agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Vendee and, at the Vendee's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 15 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment by the Vendee; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued

and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 15.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate

lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Vendee as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 15), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Vendee hereunder. From and after the date of any such sale, the Vendee shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder.

with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with the interest from the date of such demand to the date of payment by the Vendee at the rate per annum set forth in Article 2 hereof, applicable to amounts remaining unpaid after becoming due and payable. If the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event

that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 15 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto and the rights of any Lessee under a Lease.

Article 16. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of

or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 17. Conditions to Delivery. The Vendor shall not be required to deliver any unit of Equipment to the Vendee unless and until it shall have received:

(a) an opinion of counsel to the effect that
(i) the Vendee is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) this Agreement has been duly authorized, executed and delivered by the Vendee and is a legal and valid instrument binding upon the Vendee and enforceable against the Vendee in accordance with its terms; and

(b) such other documents which the Vendor may reasonably request in connection herewith.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any Lease, any assignments hereof or thereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Payment of Expenses. The Vendee will pay all reasonable costs and expenses (herein called Expenses) incident to this Agreement, the Other Agreement

and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the Vendor and all reasonable costs and expenses in connection with the acquisition of the Equipment and certain other railroad equipment (hereinafter called the Other Equipment) covered by a Conditional Sale Agreement dated as of May 15, 1969, as amended and supplemented, among American Investors Company No. 5, a partnership, MDC Railease Corp. and Penn Central Company, by the Vendor from the Trustees and the transfer thereof to the Vendor, as follows:

(a) premiums on policies of physical damage insurance carried by the Vendor on the Equipment prior to delivery of units of Equipment hereunder;

(b) out-of-pocket expenses in connection with the stenciling, marking, and repairing of the Equipment in the shops of the Trustees pursuant to the Settlement Agreement between the Trustees and the Vendor;

(c) transportation and storage charges for the Equipment and the Other Equipment not to exceed \$50,000;

(d) consulting fees paid to Coverdale and Colpitts in connection with the evaluation of the Equipment and the Other Equipment; and

(e) legal fees, other than fees arising out of litigation subsequent to the date hereof with American Investors Company No. 5.

The Vendee shall not be liable for Expenses listed in clauses (b) through (d) of this Article 19 and in clauses (b) through (d) of the first paragraph of Article 19 of the Other Agreement to the extent the aggregate thereof exceeds \$175,000. Expenses shall be included in the Conditional Sale Indebtedness pro rata between this Agreement and the Other Agreement and shall be payable in instalments as provided in Article 2 hereof; provided, however, that any amount of Expenses under this Agreement and the Other Agreement exceeding \$125,000 shall not be due and payable until June 1, 1980 and shall not bear interest.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Vendee, at 191 Round Swamp Road, Huntington, New York, or in care of William L. Weiss, Esq., 6 East 43rd Street, New York, New York 10017; and

(b) to the Vendor, at 20 Pine Street, New York, New York 10015;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. Article headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Exhibits hereto, exclusively states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Vendee.

ARTICLE 22. Law Governing. The Vendee warrants that its chief place of business and its chief executive offices are located in the State of New York. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of such state; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments

hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all of the date first above written.

CHEMICAL BANK,

[Corporate Seal]

by

Philip W. Abell
Vice President

Attest:

C. J. Martin
Assistant Secretary

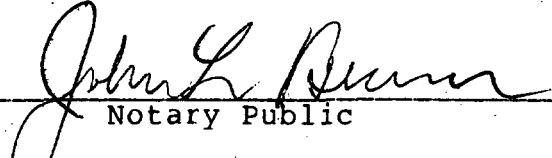
HARVEY ENTERPRISES,

by

[Signature]

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 31 day of December, 1974, before me personally appeared Philip W. Abell, to me personally known, who, being by me duly sworn, says that he is a Vice President of Chemical Bank, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.


Notary Public

[Notarial Seal]

JOHN L. BERYAR
Notary Public, State of New York
No. 41-5383899
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1976

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 31 day of December, 1974, before
me personally appeared Harvey Polly, to
me personally known, who, being by me duly sworn, says that
he is a partner of Harvey Enterprises, a limited partnership,
that said instrument was signed on behalf of said partnership,
and he acknowledged that the execution of the foregoing
instrument was the free act and deed of said partnership.

JoAnn Victoria Gebauer
Notary Public

[Notarial Seal]

My Commission expires

JO ANN VICTORIA GEBAUER
Notary Public, State of New York
No. 03-1391240
Qualified in Essex County
Certificate Recd in New York Co
Commission Expires March 30, 1975

EXHIBIT A

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Quantity</u>	<u>Unit Purchase Price</u>	<u>Total Purchase Price</u>	<u>Road Numbers (Inclusive)</u>
50'6" Box Car	XM	231	\$8,000	\$1,848,000	*FJG 153825 to FJG 153939 **LOAM 153940 to LOAM 154060

* Letters FJG designate road numbers of Fonda, Johnstown & Gloversville Railroad.

** Letters LOAM designate road numbers of Louisiana Midland Railway.

RAILROAD CAR LEASE AGREEMENT

THIS AGREEMENT AND LEASE, dated the day of
September, 1974, by and between of
(hereinafter called "Lessor") and
 , a corporation (hereinafter called "Lessee").

W I T N E S S E T H :

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

1. Cars to Be Furnished. Lessor agrees to lease to Lessee, and Lessee agrees to rent and hire from Lessor during the term of this Lease not less than four hundred (400) and not more than seven hundred and sixty (760) used railroad cars upon the terms and conditions and for the rental hereinafter set forth, which cars are sometimes hereinafter called the "Cars". The type and descriptions of the Cars, including any Association of American Railroads (A.A.R.) mechanical designation, identifying marks, road or serial numbers to be delivered to Lessee upon the execution of this Lease, are set forth in Appendix A hereto. Any additional Cars delivered to Lessee, up to seven hundred and sixty (760), or cars substituted for those previously delivered, except cars substituted under the provisions of Paragraph 9 hereof, shall be leased to and accepted by Lessee, as provided in Paragraph 5, at the rental as set forth in Paragraph 4 hereof. When any such subsequent delivery of Cars is made, an amendment to Appendix A shall be executed by Lessee and Lessor indicating the type and description of the Cars involved, as reflected in Appendix A for Cars delivered upon the execution of this Lease. Upon acceptance by Lessee of any subsequently delivered Cars, the provisions of this Lease shall become fully applicable thereto.

2. Term of Lease. The term of this Lease for any Cars delivered hereunder shall commence upon their acceptance

by Lessee, as provided for in Paragraph 5 hereof, and shall terminate five (5) years from the date of this Lease, irrespective of the date of the acceptance of any Car.

3. Delivery and Use of Cars. Lessor agrees to deliver at its expense, and Lessee agrees to accept the Cars at such point or points to which the parties may agree, not necessarily on Lessee's property. Lessor's obligation as to such deliveries shall be subject to all delays resulting from causes beyond its control. Lessee agrees to use the Cars exclusively in its own or connecting line service, and none of the Cars, except with the prior written consent of Lessor, shall be shipped beyond the boundaries of the United States or Canada. Lessor agrees to apply Lessee's reporting marks to the Cars, notwithstanding that title to them shall remain in Lessor, and Lessor agrees to apply appropriate marks on the Cars to show title in Lessor. Lessor will also cause each Car to be marked with Lessee's road numbers referred to in Appendix A. Such road numbers shall not be changed, except by agreement of both Lessor and Lessee. As long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession of the Cars and shall have the full right of use thereof upon the lines of any railroad owned, leased or operated by Lessee or Lessee's parent company, or over which Lessee has trackage rights, and upon connecting and other railroads in the usual interchange of freight cars, but subject at all times to all terms and conditions of this Lease.

4. Payment of Rental. Lessee agrees to pay for each Car accepted by it a rental of 93% of all income received by Lessee for the use of such cars by others and 93% of the car hire rates applicable under the ICC Car Hire Rate Table in effect from time to time during the term of this Lease when Lessee is using such cars (herein called the "Rental"). Such Rental shall be applicable from the date of acceptance as provided in Paragraph 5 and until such Car is returned

to Lessor upon the termination of this Agreement. Such rentals shall be due and paid commencing on the fifteenth day of the second month after the date of acceptance as provided in Paragraph 5, and on the fifteenth day of each month thereafter until the fifteenth day of the second month subsequent to the month in which this lease shall terminate, prorating, however, any period which is less than a full month. Rental payments shall be made to the Lessor and accounted for as follows:

(a) All checks received by Lessee on account of use of the Cars by others shall be received and held in trust and promptly deposited in a special bank account which will be maintained by Lessor in a depository of its choice and on which it will be the sole signatory (herein called the "Rental Account"). Rental payments due directly from Lessee on account of its use of the Cars shall similarly be deposited in the Regular Account;

(b) Lessee shall report to Lessor on a monthly basis in writing with respect to the Rental amounts so deposited and shall provide for Lessor a breakdown of that amount that constitutes normal per diem charges and that amount which constitutes "incentive income" as that term is defined in the said Car Hire Rate Tables. The part of such deposits that represents incentive income shall be removed each month and deposited by Lessor in a separate account (herein called the "Incentive Account"), which shall be a dual signatory account on which both Lessor and Lessee shall sign, jointly.

(c) The funds in the Incentive Account shall be used solely for the purchase of new railroad cars or for the rebuilding of old railroad cars as shall be mutually agreed upon by Lessor and Lessee and in accordance with Interstate Commerce Commission Rules. The funds in the Incentive Account shall be divided as between Lessor and

Lessee so that Lessee's share thereof shall at all times be an amount equal to 7% of the Rentals received under Paragraph 4 hereof (herein called "Lessee's Share"). Any railroad cars acquired from Lessee's Share of the funds in the Incentive Account shall be and remain the property of Lessee. Any railroad cars acquired from Lessor's share of the funds in the Incentive Account shall be purchased by Lessor from Lessee, at Lessee's cost, and the Lessee shall at that time remit to Lessor an amount equal to the value of the Cars so purchased. Lessor shall have the option to lease to Lessee any Cars acquired under this subparagraph 4(c) as provided in Paragraph 9 hereof. All costs of administration, bookkeeping and the like relating to such accounts shall be the expense of Lessor.

5. Acceptance of Cars by Lessee. Each of the Cars shall be subject to Lessee's inspection upon its initial receipt, and shall thereupon be accepted in writing by a duly authorized officer of Lessee. Notwithstanding the foregoing, or whether such writing is furnished by Lessee, the loading of each such Car by Lessee or at its direction or by any other railroad or delivery of any Car to any railroad interchange which Car shall be in conformity with Interstate Commerce Commission or American Association of Railroads Rules and Regulations pertaining to standards of car repair or car fitness for interchange shall be conclusive evidence that said Car is in fit and suitable condition, and shall constitute and be deemed to be acceptance thereof by Lessee.

6. Reports of Car Movements. Lessee agrees that it will secure from the railroads, and provide Lessor with reports of all Car movements, including dates loaded and shipped, commodity, destination, and full junction routing. Lessee also agrees to furnish to Lessor whenever required by it an accurate statement, signed by its President or a Vice President, of the amount, description and numbers of Cars:

(i) which have been furnished under this Lease; (ii) which may have been worn out, become obsolete, lost, destroyed or rendered unfit for use by accident or otherwise; (iii) which require repairs and in what manner and to what extent; and (iv) which are currently undergoing repairs, and in what manner and to what extent.

7. Maintenance Or Repairs. After acceptance of any Car by Lessee, it shall at all times thereafter during the term of this Lease, at Lessor's cost and expense, maintain and keep the Cars in good and proper repair and running condition. In the event that any of the Cars, or the fittings, removable parts, appliances or appurtenances thereto shall in any manner be damaged, destroyed, lost, removed or stolen, Lessee agrees to assume financial responsibility for such damage when in Lessee's possession. Lessee also agrees at Lessor's cost to comply with and maintain the Cars in accordance with all Governmental laws, regulations and requirements, and with the Rules of Interchange of the Association of American Railroads (or of any successor thereto), with respect to the use, maintenance and operation of the Cars during the continuance of this Lease. In the event that any equipment or appliance on any Car shall be required to be changed or replaced, whether removable or otherwise, or any additional or other equipment or appliance is required to be installed on any Car in order to comply with such laws, regulations, requirements and rules effective after the date of the delivery of such Car, Lessee agrees to make such changes, additions and replacements at Lessor's expense. Any parts installed or replacements made upon the Cars by Lessee shall be considered accessions to the Cars and title thereto shall be immediately vested in Lessor. Lessee also agrees to perform at Lessor's expense whatever maintenance may be necessary to conform to the provisions of Paragraph 15 of this Lease pertaining to condition of Cars upon return of Cars to Lessor.

Lessor, after acceptance of any Car by Lessee, shall be responsible for repairs necessary because of structural defects of any Car whether or not attributable to any misuse of the Car by Lessee or Lessor or other person in possession thereof, or to any damage or destruction thereof. Lessor may notify Lessee of any repairs which may be required for any Car, and that in the event shall Lessee fail to make such repairs promptly, Lessor will perform or authorize such repairs.

8. Insurance. Lessor shall during the continuance of this Lease keep all of the Cars insured against loss or damage by fire; and against all other losses or damage, the risk of which is customarily insured against by railroad companies at its cost and expense.

9. Cars Removed From Service. In the event of the loss or destruction of any Car from any cause whatsoever during the term of this Lease, the rental with respect to such Cars shall terminate upon receipt by Lessor of written notification thereof. The Lessor or its insurer shall have the rights of subrogation and indemnification to and for any claim for loss or destruction and thereunder may, at its option, assume the right to collect its claim for the value of such Car from the party responsible and liable for the loss or destruction of the Car. In furtherance of the foregoing, Lessee hereby authorizes and empowers Lessor in Lessor's own name, or in the name of and as attorney hereby irrevocably constituted for Lessee, to ask, sue for, collect, receive and enforce any and all rights to which Lessee may be entitled by reason of the destruction of the said Car. In the event any Car is reported to be bad ordered and Lessor elects to permanently remove such Car from Lessee's service, rather than have such Car taken to a railroad or car shop for repairs, the rental with respect to such Car shall terminate upon receipt by Lessor of notification that such

Car was bad ordered. Lessor shall have the right, but shall not be obligated, to substitute for any such Car another Car of the same type and capacity and the monthly rental with respect to such substituted Car shall commence upon delivery of such substituted Car to Lessee.

10. Responsibility for Damage to Lading. Lessor shall not be liable for any loss or damage to commodities, or any part thereof, loaded or shipped in or on the Cars, and Lessee agrees to assume financial responsibility for, to indemnify Lessor against, and to save it harmless from any such loss or damage.

11. Indemnification by Lessee. Lessee agrees to indemnify and save harmless Lessor against any loss, liability, claim, damage or expense (including the reasonable cost of investigating and defending against any claim for damages) which Lessor may incur by reason of its ownership of the Cars during the term hereof, arising out of or in connection with the use of the Cars other than damage to the Car itself and save Lessor harmless against any claim or suit by reason of any accident resulting in damage to property or injury to any person, excepting, however, any loss, liability, claim, damage or expense when the Car for reason of repair or otherwise is in possession of Lessor or under the direct control of Lessor.

12. Lessee Not to Overload Cars. Lessee agrees not to load any of the Cars in excess of the capacity stenciled thereon.

13. Assignment. Lessee shall make no transfer or assignment of its interest under this Lease with respect to its Cars covered hereunder without Lessor's prior written consent. No right, title or interest in any of these cars shall vest in Lessee by reason of this Lease except for the provisions of Paragraph 4 of this Agreement, or by reason of the delivery to or use by Lessee of the Cars, except the right to use the Cars in accordance with the terms of the Lease.

Lessor and any assignee of Lessor shall be entitled to sell, assign, and transfer its entire title and reversion in and to the Cars and/or its rights to rents and other payments payable by Lessee hereunder and to the performance of the other covenants herein made by Lessee, and such assignee or any subsequent assignee thereof shall have and succeed to all of the rights, duties and remedies herein conferred upon and reserved to Lessor.

14. Remedies. If Lessee shall fail to perform any of its obligations hereunder, Lessor shall give written notice to Lessee and, if Lessee shall fail to cure within thirty days of such notice, Lessor at its election may either (a) terminate this Lease immediately, or (b) withdraw the Cars which have to that date been delivered from the service of the Lessee and deliver the same, or any thereof, to others upon such terms as Lessor may see fit.

The time of payment of rentals is of the essence of this Lease. If Lessee shall fail to carry out and perform any of its obligations under this Lease, or if a petition in bankruptcy, or for reorganization, or for a trustee or receiver, is filed by or against Lessee (unless such petition shall be dismissed within thirty (30) days from the filing or other effective date hereof, or shall within such period be nullified, stayed or otherwise rendered ineffective, or unless any such receiver(s) or trustee(s) shall, within thirty (30) days from the date of his or their appointment, adopted this Lease pursuant to due authority of the Court of his or their appointment), then and in any such event, Lessor may at its option declare this Lease terminated and upon such

declaration all instalments of rent not theretofore due and payable shall forthwith become due and payable and Lessor may enter upon the railroad or premises where the Cars or any of them may be and retake possession thereof, and remove Lessee's road number and name therefrom. If Lessor waives its said rights or does not declare this Lease terminated, Lessee's obligations hereunder shall continue. The aforesaid remedies of Lessor shall not be deemed exclusive, but shall be cumulative and in addition to all other rights and remedies given or provided by law or in equity. No delay or failure on the part of Lessor to exercise any rights hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right preclude any other or further exercise thereof, and no act or omission to act by Lessor against Lessee or against any Car, or any delay or indulgence granted or allowed by Lessor, shall prejudice any of Lessor's rights.

15. Return of Cars. At the end of the term of this Lease, or upon any termination thereof for cause as defined herein, Lessee shall, at its own expense, forthwith and in the usual manner and at the usual speed of freight trains, draw the Cars to such point or points on its railroad as shall be reasonably be designated by Lessor and will store the Cars thereat at the option of Lessor until delivery to Lessor without charge for storage for ninety days, and Lessee further agrees that the Cars upon their return to Lessor shall be in the same or as good condition as received, ordinary wear and tear excepted. Lessee shall also return Cars free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee, and if not so returned Lessee shall reimburse Lessor for any expense incurred in cleaning such Car or Cars. The performance of the covenants by Lessee contained above in this

Paragraph is of the essence of this Lease, and it is agreed that on application to any court of equity having jurisdiction in the premises that the Lessor shall be entitled to a decree against Lessee requiring specific performance thereof.

16. Payment of Taxes And Liens. Lessor shall pay or cause to be paid any and all taxes (including, without limitation, gross receipts taxes but excluding State or Federal income taxes imposed upon the Lessee), and other governmental levies or charges lawfully imposed upon or measured by this Lease or any assignment hereof or upon or by any sale, use, operation, payment, shipment, delivery or transfer of title of the Cars under the terms hereof, or upon or by any or all the Cars or the interest of the Lessee therein, which Lessor may be legally obligated to pay. Lessee shall at all times keep the Cars free of all taxes and assessments which might in any way affect the title of the Lessor, or result in a lien upon any of the Cars. Lessee shall pay or satisfy and discharge any and all sums claimed by any party by, through or under the Lessee or its successors or assigns which relate to Lessee's operation of the Cars and not ownership thereof, and which, if unpaid, might become a lien or a charge upon the Cars equal or superior to the title of the Lessor thereto.

17. Recordation. Lessor at its option may cause this Lease to be filed and recorded with the Interstate Commerce Commission under the Interstate Commerce Act in order to publish notice of, and to protect, the title of Lessor to the Cars. Lessee shall execute any and all other and further instruments as shall reasonably be requested by Lessor to assure such publication and such protection of such title. Lessor shall pay all costs, charges and expenses, including all recording and registration taxes and fees, incident to the filing, registering and/or recording of this Lease and of any instruments of further assurance hereunder.

18. Guarantee.

parent company, shall execute and deliver to Lessor a guarantee of the obligations and indebtedness of Lessee hereunder in such form and substance as shall be satisfactory to Lessor and its counsel, and shall also deliver to Lessor both certified resolutions authorizing the making of such guarantee and the opinion of its counsel confirming that such guarantee has been duly authorized, executed and is enforceable in accordance with its terms.

19. Termination For Non-Usage. In the event that during any consecutive period of ninety days (90) during the term of this Lease, the rentals shall be an amount less than 75% of the maximum rentals, exclusive of mileage, that might be earned assuming the Cars were in use and earning income three hundred sixty five days a year, Lessor shall have the right to terminate this Lease as to all or part of the Cars and if such right is exercised, Lessor shall have all rights as provided in Paragraph 15 hereof.

20. All Parties Bound. Subject only to the limitations on assignment by Lessee contained herein, this Lease shall be binding upon and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.

21. Execution in Counterparts. This Lease may be simultaneously executed in two or more counterparts, each of which, so executed, shall be deemed to be an original, and such counterparts together shall constitute but one and the same Lease, which shall be sufficiently evidenced by any such original counterpart.

22. Notice In Writing. Any notice, demand or other communication hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or deposited in the mail first class postage prepaid or delivered to a telegraph office charges prepaid, addressed as follows: If to the Lessor

If to the Lessee:

or addressed to either party at such other address as such party shall hereafter furnish to the other in writing.

23. Construction. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in Lessor's favor existing at law or in equity and may be exercised from time to time and as often and in such order as may be deemed expedient by the Lessor. The captions herein are inserted for convenience only and shall not affect the construction of this Lease. No delay or omission of the Lessor in the exercise of any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver of such event of default or an acquiescence therein. The provisions of this Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of New York and applicable Federal laws.

IN WITNESS WHEREOF, Lessor and Lessee, respectively, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names and their respective corporate seals to be hereunto affixed, duly attested, as of the day and year first above written.

By _____

By _____

Exhibit C to
Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated
as of December 15, 1974 (hereinafter called
this Assignment), by and between
(hereinafter called
the Lessor or the Vendee) and CHEMICAL BANK
(hereinafter called the Vendor).

WHEREAS the Vendee and the Vendor are entering
into a Conditional Sale Agreement dated as of the date hereof
(hereinafter called the Security Documentation) providing
for the sale to the Vendee of certain units of railroad
equipment (hereinafter called the Equipment);

WHEREAS the Lessor and Railroad
Company (hereinafter called the Lessee) are entering into
a Railroad Car Lease Agreement dated as of
(hereinafter called the Lease), providing for the leasing
by the Lessor to the Lessee of certain units of the Equipment
(such units of Equipment covered by the Lease being hereinafter
called the Units); and

WHEREAS, in order to provide security for the obli-
gations of the Lessor under the Security Documentation, the
Lessor agrees to assign for security purposes its rights in,
to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises
and of the payments to be made and the covenants hereinafter
mentioned to be kept and performed, the parties hereto agree
as follows:

1. Subject to the provisions of Paragraph 11
hereof, the Lessor hereby assigns, transfers and sets over
unto the Vendor, as collateral security for the payment and
performance of the obligations of the Lessor as Vendee and
of the Lessee under the Security Documentation, all the Les-
sor's right, title and interest, powers, privileges, and
other benefits under the Lease, including, without limita-
tion, the immediate right to receive and collect all rentals,
profits and other sums payable to or receivable by the Lessor
from the Lessee under or pursuant to the provisions of the
Lease whether as rent, casualty payment, indemnity, liquidated
damages, or otherwise (such moneys being hereinafter called
the Payments), and the right to make all waivers and agree-

ments, to give all notices, consents and releases, to take all action upon the happening of a default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder, any balance shall be paid to and retained by the Lessor. If the Vendor shall not receive any rental payment under the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in

the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void. At the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessee's and the Lessor's obligations under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. Prior to the delivery of any Unit to the Lessee, the Lessor will furnish the Vendor with an opinion of counsel that this Assignment has been duly authorized, executed and delivered by the Lessor and is a legal and valid agreement binding on the Lessor.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or

to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as an event of default under the Security Documentation has not occurred and is not then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Vendor by this Assignment.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

by _____

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of 1974, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this day of 1974, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of CHEMICAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank and that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Notary Public

[Notarial Seal]

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of December 15, 1974.

COMPANY, RAILROAD

by

Vice President